

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. 1:07-cr-0023 WTL/KPF
)	
MICHAEL A. COOK,)	
)	
Defendant.)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable William T. Lawrence, Judge, on July 30, 2012, designating this Magistrate Judge to conduct hearings on the Petition for Summons or Warrant for Offender Under Supervision, filed with the Court on August 31, 2012, and to submit to Judge Lawrence proposed Findings of Facts and Recommendation for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings in this matter were held on September 14, 2012, pursuant to Title 18 U.S.C. §3583, and Rule 32.1(a)(1) of the *Federal Rules of Criminal Procedure*.¹ The government appeared by Melanie Conour, Assistant United States Attorney; the defendant appeared in person with his appointed counsel, William Dazey, Office of the Indiana Federal Community Defender; and Mark McCleese, U.S. Parole and Probation officer, appeared and participated in the proceedings.

¹ All proceedings are recorded by suitable sound recording equipment unless otherwise noted. *See*, Title 18, United States Code, Section 3401(e).

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That William Dazey, Office of the Indiana Federal Community Defender, appointed counsel, was present to represent Mr. Cook in regard to the Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Cook and his counsel who informed the Court that they had read and understood the specifications of each alleged violation and waived further reading thereof.

3. Mr. Cook was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. That Mr. Cook would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Cook had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Cook had violated the alleged condition or conditions of supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Lawrence's designation on July 30, 2012.

7. Mr. Dazey stated that Michael A. Cook would stipulate there is a basis in fact to hold him on the specifications of violations of supervised release set forth in the Petition. Mr. Cook waived, in writing, the preliminary examination and he was held to answer.

8. Mr. Cook, by counsel, stipulated that he committed specifications of violations numbered 1, 2 and 3 set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	“The defendant shall refrain from any unlawful use of a controlled substance.”
2	“The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.”
3	“The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.”

On July 5, 2012, Mr. Cook’s Hendricks County probation was revoked. The probation violation was filed due to the defendant’s admitted heroin use on May 21, 2012. Additionally, on January 22, 2012, the defendant submitted a urine sample which tested positive for marijuana (See Petition filed February 22, 2012), and on September 24, 2011, Mr. Cook was arrested in Hendricks County for Operating a Vehicle While Intoxicated/Prior (see Petition filed October 27, 2011).

The Court placed Mr. Cook under oath and directly inquired of him whether he admitted specifications of violations of his supervised release set forth above. Mr. Cook stated that he admitted the above violations as set forth. The government moved to dismiss specification numbered 4 contained in the Petition to revoke defendant’s supervised release, filed August 31, 2012, and the Court dismissed the same.

Counsel for the parties further stipulated to the following:

- 1) Mr. Cook has a relevant criminal history category of II, U.S.S.G. §7B1.4(a).
- 2) The most serious grade of violation committed by Mr. Cook constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).

- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Cook is 12-18 months.
- 4) The appropriate disposition of the case would be 1 day in the custody of the Attorney General or his designee, with 18 months of supervised release to follow.
- 5) In addition to the conditions of supervised release previously imposed, the defendant will also be required to participate in a mental health evaluation, as well as a drug evaluation and treatment.

The Court having heard the admissions of the defendant, stipulations of the parties, and the arguments and discussions of behalf of each party, **NOW FINDS** that Mr. Cook violated the conditions of supervised release as delineated in the Petition to Revoke his supervised release.

Mr. Cook's supervised release is therefore **REVOKED** and he is sentenced to the custody of the Attorney General or his designee for a period of 1 day. During his 18 months of supervised release, defendant will be subject to the previously-imposed conditions of supervision and to mental health evaluation and treatment, as well as drug addiction evaluation and treatment.

The Magistrate Judge requests that Mark McCleese, U. S. Parole and Probation Officer, prepare for submission to the Honorable William T. Lawrence, Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

Counsel for the parties and Mr. Cook stipulated in open court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72(b), *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U.S. District Court for the Southern District of Indiana*.

Counsel for the parties and Mr. Cook entered the above stipulations and waivers after being notified by the undersigned Magistrate Judge that the District Court may refuse to accept the stipulations and waivers and conduct a revocation hearing pursuant to Title 18 U.S.C. §3561 *et seq.* and Rule 32.1 of the *Federal Rules of Criminal Procedure* and may reconsider the Magistrate Judge's Report and Recommendation, including making a *de novo* determination of any portion of the Report or specified proposed findings or recommendation upon which he may reconsider.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above recommendation revoking Mr. Cook's supervised release and imposing a sentence of imprisonment of 1 day in the custody of the Attorney General. During his supervised release of 18 months, defendant will be subject to the previously-imposed conditions of supervision, and mental health evaluation and treatment, as well as drug addiction evaluation and treatment.

IT IS SO RECOMMENDED this 21st day of September, 2012.

A handwritten signature in black ink, appearing to read 'KF 9/21/12', is written over a light gray rectangular background.

Kennard P. Foster, Magistrate Judge
United States District Court

Distribution:

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U. S. Marshal